

0.0 Planning Application PLA19/0043 at 420 Ringwood-Warrandyte Road, Warrandyte for an amendment to Planning Permit PLN18/0415, to allow for the consumption of liquor on the deck and to amend Condition 14 relating to limitations on amplification equipment.

File Number: IN19/530
Responsible Director: Director City Planning and Community
Applicant: SongBowden Planning on behalf of Lowe Corporation
Planning Controls: Rural Conservation Zone (RCZ3), Bushfire Management Overlay (BMO), Environmental Significance Overlay (ESO2)
Ward: Mullum Mullum
Attachments: 1 Locality Map
2 Advertised Plan
3 Objector Map
4 Legislative Requirements

EXECUTIVE SUMMARY

Purpose

1. This report provides Council with an assessment of an Amended Planning Permit Application PLA19/0043 for Bramleigh Estate at 420 Ringwood-Warrandyte Road Warrandyte.
2. Planning Permit PLN18/0415 was issued on the 26 September 2018, allowing “buildings and works associated with alterations and additions to the existing function centre and installation of a non-illuminated business sign”.
3. The works which included the construction of a deck on the southern side of the building have now been completed.

Proposal

4. The purpose of the amended permit application primarily is to allow for consumption of liquor on the now existing deck and to delete/amend condition 14 of Planning Permit PLN18/0415 to allow amplified noise (music and voice) at background levels from speaker systems associated with wedding ceremonies.
5. Condition 14 of the permit restricted the use of external sound amplification equipment on the deck. The condition stated... “No external sound amplification equipment or loudspeakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose without the further written consent of the Responsible Authority”. The amended application proposes to modify this condition.

Advertising

6. Notice of the application was given over a two week period. Twenty one objections have been received including a joint objection from a group of local residents.

Key Issues in considering the application

7. The key issues for Council in considering the proposal relate to the potential for an increase in noise levels arising from both consumption of alcohol on the deck, voices and the playing of amplified equipment on the deck.

Conclusion

8. It is recommended that the amendment be supported subject to additional conditions that will seek to control offsite amenity impacts being generated including limiting the times when consumption of liquor and amplification noise from speakers may occur.

1. RECOMMENDATION

That Council:

Issue a Notice of Decision to Grant an Amended Planning Permit (PLN18/0415) in relation to Planning Application PLA19/0043 at 420 Ringwood-Warrandyte Road, Warrandyte for:

Preamble Amended (new/modified additions underlined)

- **Buildings and works associated with alterations and additions to the existing function centre and installation of a non-illuminated business sign and sale and consumption of liquor.**

and subject to the following conditions:- (new conditions underlined, old conditions struck out)

Amended Plan

1. Before the development starts, amended plans must be submitted via email to and approved by the Responsible Authority. When approved, the plans will then form part of the permit. The plans must be drawn to scale with dimensions and two copies must be provided. The plans must be generally in accordance with the plans submitted with the application (drawn by Impact Design Consultants, job number 17-0943, revision D, dated 14 May 2018) but modified to show:
 - 1.1 The provision of a 400mm gap under the decking to allow the passage of overland flow water beneath the deck.
 - 1.2 The provision of a safety barrier across the northern end of car spaces 25 to 29 inclusive which are located at the top of a steep batter slope.
 - 1.3 A plan notation to indicate the proposed gravel car parking adjacent to retained trees is to be constructed at or above existing site grade, in accordance with the recommendations of the arboricultural report (prepared by Ajarboriculture, dated August 2018) to the satisfaction of the Responsible Authority.
 - 1.4 A plan notation to indicate the Tree Protection Measures contained in Appendix 4 of the arboricultural report (prepared by Ajarboriculture, dated August 2018) to be implemented to the satisfaction of the Responsible Authority.
 - 1.5 A plan notation to indicate that the existing swale drain will be rock lined, with a series of steps to control the velocity of overland flow, to the satisfaction of the Responsible Authority.
 - 1.6 The signage plan clearly dimensioned to demonstrate the display area does not exceed 3sq.m in accordance with the Clause 52.05 (Category 4) and the proposed colour scheme.

Endorsed Plans

2. The development as shown on the approved plans must not be altered without the written consent of the Responsible Authority.

Vegetation Protection

3. Before the development starts (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), vegetation marked on the plan to be retained must have a Vegetation Protection Fence erected to the edge of the tree canopy to the satisfaction of the Responsible Authority. Each vegetation protection fence must be constructed of orange parawebbing or similar robust material approved by the Responsible Authority and erected to a height of 1.5 metres above ground level and clearly signed "Vegetation Protection Zone – No Entry" on all sides, to the satisfaction of the Responsible Authority.
4. The following actions must not be undertaken within the Vegetation Protection Zone, to the satisfaction of the Responsible Authority:
- Materials or equipment stored within the zone;
 - Nothing is to be attached to any tree (including temporary service wires, nails, screws or any other fixing device);
 - Open cut trenching or excavation works (whether or not for laying of services) undertaken within the zone; or
 - Changes to the soil grade level within the zone.
5. The Tree Protection Measures contained in Appendix 4 of the arboricultural report (prepared by Ajarboriculture, dated August 2018) must be implemented to the satisfaction of the Responsible Authority.
6. The owner must ensure that contractors/tradespersons who install services or work near the vegetation to be retained are made aware of the need to preserve the vegetation and to minimise impacts through appropriate work practices.
7. No vegetation, apart from that shown on the approved plan as vegetation to be removed may be felled, destroyed or lopped without the written consent of the Responsible Authority.

Site Management

8. The owner must use appropriate site management practices during construction to prevent the transfer of mud, dust, sand, slurry, litter, concrete or other construction waste from the site into drains or onto nearby roads. In the event that a road or drain is affected, the owner must upon direction of the responsible authority take the necessary steps to clean the affected portion of road or drain to the satisfaction of the Responsible Authority.

Effluent Disposal

9. All plumbing wastes from the development must be connected to the available mains sewer to the satisfaction of the Responsible Authority.

Drainage

10. All runoff from the development must be directed to the point of discharge to the satisfaction of the Responsible Authority.

Use of new deck area

11. The new deck must be used in association with the existing function centre (indoor area). It must not be used for separate or concurrent functions without the further

written consent of the Responsible Authority.

12. No permanent structures such as marquees, shade sails, gazebos or similar are to be erected on the deck without the further written consent of the Responsible Authority.
13. All car parking areas must be line marked prior to finished construction of the deck hereby approved and maintained to the satisfaction of the Responsible Authority.
14. ~~No external sound amplification equipment or loudspeakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose without the further written consent of the Responsible Authority.~~

The playing of any externally amplified music, announcements and/or conducting ceremonies on the deck must:

- 14.1 Only occur in association with wedding events conducted on the land;
 - 14.2 Only occur between the hours of 12 noon and 7:30pm, and for a maximum period that totals 2 hours per wedding event;
 - 14.3 Not exceed background level music;
 - 14.4 Be run through a portable sound system/equipment controlled by the owner/operator at all times, and be removed from the deck by 7:30pm.
15. The deck must be closed to use by patrons / guests by 10:00pm.
 16. All external windows facing the deck must be closed by 8pm. All doors providing pedestrian access to the deck must be closed after 10:00pm, and not used by any patrons / guests except for persons with limited mobility or for the purpose of emergency ingress/egress.
 17. All doors providing access to the deck must be fitted with self-closing mechanisms and these mechanisms must be maintained in good working order to the satisfaction of the Responsible Authority.
 18. The following direction signs must be installed on site:
 - 18.1 A sign on the deck identifying that the deck is closed for patron / guest use at 10:00pm;
 - 18.2 A sign on the deck identifying 'no alcohol is to be consumed beyond the curtilage of the deck at any time';
 - 18.3 A sign internal to the building and at the ramp entrance that the deck is not be used as an exit or entry to the building after 10:00pm, except for persons with limited mobility or for the purpose of emergency ingress/egress.
 19. All signs must be installed and maintained to the satisfaction of the Responsible Authority.
 20. Noise levels emanating from the premises must not exceed those required to be met under the State Environment Protection Policy (Control of Music Noise from Public Premises, No. N-2) and in the event of the Responsible Authority receiving justifiable complaints regarding noise from such sources, the onus will be on the owner of the development site to prove compliance with the relevant policy to the satisfaction of the Responsible Authority.

Sale/Service & Consumption of Liquor

21. The sale/service of liquor on the deck must:
 - 21.1 only occur between 12 noon and 7:30pm;
 - 21.2 only occur for a maximum period of 2 hours per event;

Liquor may be consumed on the deck for up to 30 minutes following the end of the service period to enable guests to finish a drink. After this time, no liquor can be consumed or is allowed on the deck.

Management Plan

22. Prior to the use of the deck commencing for the sale and consumption of liquor, a Management Plan must be submitted to and approved by the Responsible Authority, to address the conditions of use of the deck under this Permit.

General

23. External lighting for the deck, car parking area and surrounds must be designed so to limit loss of amenity to residents of adjoining properties to the satisfaction of the Responsible Authority.
24. Buildings, paved areas, drainage, landscaping and all external areas must be maintained to the satisfaction of the Responsible Authority.

CFA Conditions

Mandatory Condition

25. The bushfire protection measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defendable space, water supply and access, must be maintained to the satisfaction of the responsible authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.

Amended Bushfire Management Plan

26. Within 3 months of works commencing, an amended Bushfire Management Plan must be submitted to and endorsed by the Responsible Authority. When endorsed the plan must not be altered without the consent of CFA and the Responsible Authority.

The plan must be generally in accordance with the Bushfire Management Plan prepared by BAL Assessments (version 1) but modified as followed:

- a) Removal of the dot point of "The canopy of new trees must be separated by at least 5 metres" from below the heading of "Defendable space" and replacing it with "The canopy of trees must be separated by at least 5 metres (excluding any existing tree identified on the locality plan prepared by Impact Design Consultants, revision E and dated 14-08-2018)."
- b) Removal of the dot point of "Trees must not overhang or touch elements of the building" from below the heading of "Defendable space" and replacing it with "Trees must not overhang or touch elements of the building (excluding the single feature tree within the deck)".

Permit Expiry

27. This permit will expire if one of the following circumstances applies:
- 26.1 The development is not started within two (2) years of the date of this permit; and
- 26.2 The development is not completed within four (4) years of the date of this permit.

The Responsible Authority may extend these periods referred to if a request is made in writing by the owner or occupier either before the permit expires or in accordance

with Section 69 of the Planning and Environment Act 1987.

Amended Permit Expiry

27. This Permit will expire if:

27.1 The use and/or development approved by the Amended Permit (PLA19/0043) does not start within two years of the issue date of this amended permit;

2. BACKGROUND

Planning Permit PLN18/0415

- 2.1 Planning Permit PLN18/0415 was issued on the 26 September 2018, allowing “buildings and works associated with alterations and additions to the existing function centre and installation of a non-illuminated business sign”.
- 2.2 The application proposed the construction of a new deck on the southern side of the building with associated access ramp, formalisation of car parking areas and the installation of a business sign at the front entry.
- 2.3 The application stated that:
- “the deck would be used as a “meet and greet” area for functions, prior to the function room being opened. This area will provide guests attending the function centre an area to congregate after parking their vehicles. This area will not be used independently of the existing building”.*
- 2.4 Planning Permit PLN18/0415 included nineteen (19) conditions, including many to control amenity impacts associated with the use of the deck. The conditions included a prohibition on amplified sound systems being used on the deck (Condition 14).
- “No external sound amplification equipment or loudspeakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose without the further written consent of the Responsible Authority”.*
- 2.5 In issuing the Planning Permit, Council accepted that the property had existing use rights under the Manningham Planning Scheme to hold weddings and functions.
- 2.6 An existing use right can be established by an owner under the Clause 63 of the planning scheme if they can demonstrate that an activity has occurred ongoing for 15 years. In this instance, the application provided information to demonstrate that the venue (formally Alfred’s Homestead) was used as a restaurant, dinner dance and function venue since 1989, which included weddings.
- 2.7 It is important to note the owner has not sought a Certificate of Compliance, which is a legal document that confirms an existing use right. Council proceeded to issue the permit for the deck associated with the venue as it has no information before it that would suggest the existing use right can’t be established, and it would appear the applicant could quite easily apply for a Certificate.

- 2.8 The plan for the deck was approved and endorsed on 16 November 2018, following a minor secondary consent request that sought to remove a signature tree that was proposed within the deck's design.
- 2.9 The deck was constructed between November 2018 and January 2019.

Liquor License Application

- 2.10 On 20 February 2019, an application for variation of a Restaurant and Café Liquor Licence was lodged by the Lowe Corporation to Victorian Commission for Gambling and Liquor Regulation (VCGLR) to increase the redline area and include the external deck.
- 2.11 A copy of the application was served on Council pursuant to Section 33(2) of the Liquor Control Reform Act 1998 which is when Council became aware of the intention to licence the deck area.
- 2.12 On 8 March 2019, Council indicated to the Commission that they objected to the granting of the variation based on there being no planning permit for the sale and consumption of liquor on the deck. It appears that the application made to the Victorian Commission for Gambling and Liquor Regulation (VCGLR) used the endorsed town planning drawings from Planning Permit PLN18/0415, showing a red-line superimposed over the approved deck area implying the planning permit approved the red-line over the deck, when it did not. In a letter to the Victorian Commission for Gambling and Liquor Regulation (VCGLR), Council noted other anomalies and sought an extension of time to provide further submissions once a full investigation had occurred.
- 2.13 The amended Liquor Licence No 32201709 was subsequently issued by the VCGLR. The licence included the following varied conditions:
- The licensee must not permit the playing of any amplified or recorded musical works at higher than background level on the external deck area.
 - Trading within the external deck area must conclude not later than 10pm on any day.
- 2.14 The license provides for the sale and consumption of liquor subject to Restaurant and Café conditions, which requires that a substantial provision must be made in the venue for tables and chairs, and the predominant activity carried out must be the preparation and serving of meals. The license provides for a maximum capacity of 400 patrons, and allows trading until 1am, except on Sunday and various public holidays (where trading is limited to 11.30pm).
- 2.15 A Liquor License and Planning Permit have separate enforcement protocols, carried out by VCGLR and Council respectively.

The Amendment Request

- 2.16 The amended planning application (PLA19/0043) was received on 28 May 2019. It simply requested:
- *Allow for the consumption of liquor on the premises in accordance with the redline for the building and decking areas.*

- *Include two speakers (85 watt each) on the decking for the purpose of background music until 8pm (Amendment to Condition 14 of the permit).*
- 2.17 The application was advertised on 17 June 2019, and 21 objections were received. The objectors were generally within a 300m radius of the property.
- 2.18 During the advertising period, the owner of Bramleigh also lodged a submission in support of the application and included references to noise attenuation measure controls:
- “...I have worked extensively with neighbours in the period of time that I have been operating the venue and have taken on board all suggestions and put many of them into place. I have also contacted local neighbours explaining our current plans to replace windows etc. to try and minimise noise from the venue at all times, not just after 11pm when we are required to restrict noise even though we are licensed until 1am most nights of the week. At the time we took over the site in January 2018, we have improved the local amenity of the site greatly. We have done extensive clean-up of the site (which many neighbours have contacted and thanked us for) Removed unsafe dead pine trees that had already seen 2 failures prior to our arrival, improved the venue access for disabled patrons, renovated the food preparation areas, and reduced the food safety concerns that Manningham Council had expressed to the prior owners on many occasions.....”*
- When dealing with liquor commission for the red line adjustment, I offered to permanently reduce our trading hours to liquor commission who found that this was not required, and we had voluntarily offered to have a deck curfew of 10pm, with security actively involved for each event from 9.30pm until half an hour after the last guest has left the venue to ensure that this is enforced and to bring all guests inside at the correct time, to reduce the impact on any neighbours. By controlling the times on the deck area, and not allowing it to run until 1am (even as a social area without alcohol consumption) I have better control over the potential for impact to our neighbours. We can ensure deck doors are closed at 10pm which will eliminate the majority of the noise concerns as it is when the doors are opened and closed that noise can escape from the venue. The security will also be responsible for assisting cars when leaving the venue to reduce any potential excessive noise from vehicles leaving the site any time after 9.30pm.*
- I am again wanting to offer a reduction in our trading hours to the council for our application for the change in planning permit if required. We are actively working with our clients regardless and when discussing time lines we aim to finish events Sunday – Thursday by 11pm and by midnight on Friday & Saturday. “*
- 2.19 A consultation meeting was held on 25 July 2019, attended by the applicant, Council staff, Councillors and objectors. There was no firm resolution, but the applicant acknowledged that they would provide more information in support of the application, to help address some of the concerns.
- 2.20 An amended application (pursuant to Section 57A of the Planning and Environment Act 1987) was received on 5 August 2019. It was circulated to all objectors.
- 2.21 The amended application provided more details in relation to the request, and sought additional conditions to limit both the serving and consumption of alcohol

on the deck, and when amplified music and noise occur. The application is further described in Section 4 of this Report, under the heading Proposal.

2.22 Before the application was amended, Council officers met and discussed with the owner, the possibility of formalising some commitments that had been made in the applicant's submission during the advertising period and reaffirmed at the consultation meeting relating to the current operations of the existing venue. These fall outside the limited ambit of the application (which relates to the use of the deck only). They included reducing the late night trading hours of the venue, the employment of security within the venue which is understood to occur between 8.30pm and half an hour after the last guest has left, and future noise attenuation measures through building works.

2.23 These commitments could have been included with the application and made binding through an agreement on the goodwill of the applicant, but have not. The applicant has indicated:

It is important that due to the confined nature of the permission sought as part of this application, noise attention measures for the existing building and operation of the function centre do not form part of this application.

3. THE SITE AND SURROUNDS

3.1 The site is located on the west side of Ringwood-Warrandyte Road, Warrandyte, at the intersection with Harding Road Warrandyte. The site has an overall site area of 3.695 hectares with an irregular frontage of 85.0m to Ringwood-Warrandyte Road, Warrandyte.

3.2 The land is located within a Rural Conservation Zone and adjoins land with the same zoning to the north, south and to the east of Ringwood-Warrandyte Road. Warrandyte State Park adjoins the western boundary (see Figure 1).



Figure 1: The site.

- 3.3 The site was formerly known as Alfred's Homestead, a restaurant and function centre, including a wedding venue, that had been in operation since the 1970's. The current owner of the property (Lowe Corporation) opened as Bramleigh Estate Warrandyte in late 2018.
- 3.4 The existing building is single storey, of timber clad construction with a pitched tiled roof that has undergone cosmetic external and internal alterations since ownership of the property changed in 2018. This includes the addition of a large deck on the southern side of the building (453sq.m.). Access to the deck is provided from the car park, via a ramp (see Figure 2). There are also stairs at the main entrance to the venue on the eastern side of the building, accessed via the semi-circular driveway.
- 3.5 The building is positioned midway on the site and towards the higher portion of the land. It is setback between 130m and 95m from the eastern (front) boundary, approximately 35m from the Harding Road side boundary (north) and the deck is setback approximately 50m from the southern side boundary.
- 3.6 The existing access to the building is via a circular bitumen driveway with gravel car parking areas to the south (except for bitumen car parking spaces directly adjacent to the deck) and to the north of the building.
- 3.7 The land has scattered stands of native vegetation around the perimeter of the site, with denser vegetation towards the western boundary which adjoins the Warrandyte State Park (see Figure 3).



Figure 2: The deck and ramp.

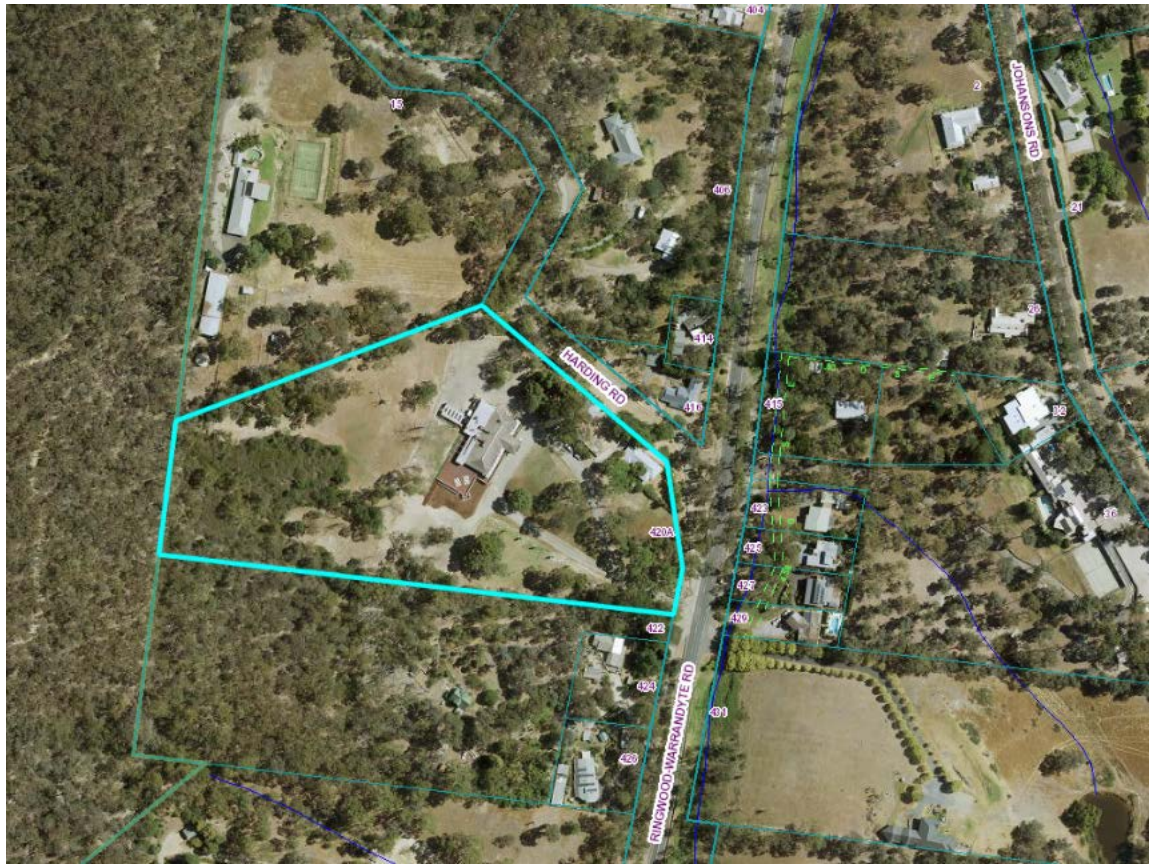


Figure 3: The surrounds

3.8 The following table outlines the surrounding properties:

Direction	Address	Description
West	Warrandyte State Park	The site directly abuts the Warrandyte State Park to the west.
North-West	15 Harding Road Warrandyte	To the north west of the site is 15 Harding Road which contains a dwelling setback approximately 86m from the common boundary. The dwelling is setback approximately 170m from the deck area.
North-East	Harding Road & 416 Ringwood-Warrandyte Road	To the north east, the site abuts Harding Road. To the north of Harding Road is 416 Ringwood-Warrandyte Road which contains a dwelling. The dwelling is setback approximately 109m from the deck area.

East	Ringwood-Warrandyte Road boundary	This is the front entry to Bramleigh Estate. On the eastern side of Ringwood-Warrandyte Road are dwellings setback approximately 180m from the deck area.
South	422 Ringwood-Warrandyte Road Warrandyte	This 3.0 hectare property has a 14.0m frontage to Ringwood-Warrandyte Road, with its driveway along the common boundary. The land has significant vegetation coverage. The land contains a dwelling located centrally on the site and setback approximately 55m from the common boundary and 107m from the deck area.

- 3.9 There appears to be 21 dwellings within a 300m radius of the venue. Several of the properties are elevated above Ringwood Warrandyte Road.

4. THE PROPOSAL

- 4.1 The amended proposal (received 5 August 2019, pursuant to Section 57A of the Planning and Environment Act 1987) seeks to add the sale/service and consumption of liquor to 'what the permit allows', delete/amend and include new conditions and a new red-line plan.
- 4.2 The amendment seeks to delete/amend Condition 14 and replace it with six (6) new conditions:

New Condition 1:

The playing of any externally amplified music and announcements on the deck must:

- only occur in association with wedding events conducted on the land;
- only occur between the hours of 12 noon and 7:30pm;
- must not exceed background level music;
- be run through a portable music system controlled by the owner/operator at all times;
- the portable music system must be removed from the deck by 7:30pm.

New Condition 2

The deck must be closed to patron / guest use after 10:00pm.

New Condition 3

All external doors providing pedestrian access to the deck must be closed after 10:00pm, and not used except for the purposes of Disability Access or emergency access.

New Condition 4

The following direction signs must be installed on site:

- a sign on the deck identifying that the deck is to be closed to patron / guest use at 10:00pm;
- a sign on the deck identifying the extent of the approved 'red line area';
- a sign internal to the building that the deck is not be used as an exit or entry to the building after 10:00pm, except for the purposes of disability or emergency access;

All signs must be installed and maintained to the satisfaction of the Responsible Authority.

New Condition 5

The service of liquor on the deck must:

- only occur between 12 noon and 7:30pm;
- only occur for a maximum period of 2 hours per event.

New Condition 6

The consumption of liquor on the deck must:

- only occur between 12 noon and 10:00pm.

- 4.3 The proposal is to extend the existing licensed area for the consumption of liquor from within the building out onto the deck, as indicated by the "redline" on the plan below. The deck and ramp permitted under planning permit PLN18/0415 is indicated on the plan shaded yellow (see Figure 4).

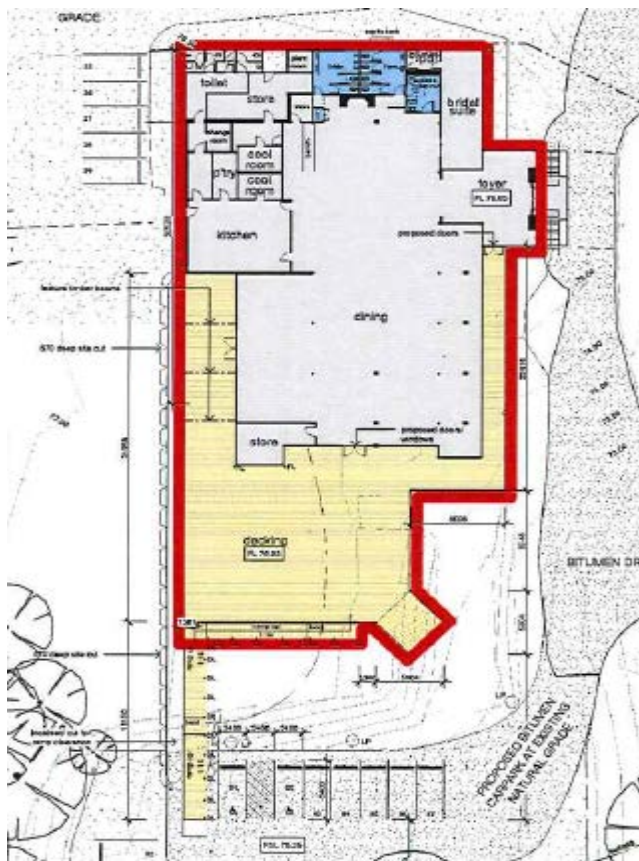


Figure 4: Red Line Plan

4.4 In support of the amended application, the applicant indicated the following:

“Use of the deck for the sale and consumption of liquor

Since the construction of the deck in late 2018, our clients have held wedding ceremonies up on the deck. It is important to note, that no planning permit is required for our clients to use the deck for wedding ceremonies as it enjoys existing use rights in this regard.

To remain competitive in today’s market, our client seeks permission for guests to be served and consume liquor on the deck during wedding ceremonies and during ‘pre-dinner’ drinks.

We confirm that the use of the deck for the service and consumption of liquor will occur in the following manner:

- *No alcohol will be **served** on the deck after 7.30pm.*
- *The service of alcohol on the deck will be limited to a maximum of 2hrs per event.*
- *The **consumption** of alcohol on the deck will be limited to between 12noon and 10pm, after which time, the deck is to be closed and not to be used by patrons.*
- *Signage is proposed to be installed within the building and on the deck that:*
 - *identifies the extent of the liquor licence ‘red line area’ to prevent guests taking alcohol onto the grounds;*
 - *identifies the deck is closed at 10pm; and*

- *all guests (except where disability access is required) must exit the building via the front door.*

Playing of Music on the Deck (variation of Planning Permit condition 14)

The current condition 14 prohibits the playing of any ceremonial music and announcements during weddings conducted on the deck.

Our client seeks the variation to condition 14 to facilitate the playing of background music and wedding announcements during the day and early evening. It is not proposed to use the deck for the purposes of a dance floor or similar.

We confirm that the playing of amplified music and announcements on the deck will occur in the following manner:

- *The playing of music will be limited to between the hours of 12 noon and 7.30pm;*
- *The playing of amplified music and announcements is to be exclusively for wedding events (not for birthday parties or any other similar function).*
- *External music levels will be limited to be no higher than background level music (as specified by Environmental Protection Authority policy SEPP N-2).*
- *Following discussions with the Council Officer's it is understood that it preferable to the Council that (if the proposal is approved) that external speakers are portable speakers owned and operated by Bramleigh Estate management and that the speakers are removed from the deck after 7.30pm. "*

5. LEGISLATIVE REQUIREMENTS

- 5.1 Refer to Attachment (Planning & Environment Act 1987, Manningham Planning Scheme, other relevant legislation policy).
- 5.2 A planning permit is required for the sale and consumption of liquor under Clause 52.27 Licensed Premises of the Manningham Planning Scheme:

A permit is required to use land to sell or consume liquor if the area that liquor allowed to be consumed or supplied under a licence is increased.

- 5.3 Section 73(2) of the Planning and Environment Act 1987 limits Council's assessment to only the amendment request:

73 (2) If the responsible Authority decides to grant an amendment to a permit subject to conditions, the conditions must relate to the amendment to the permit;.

6. REFERRALS

- 6.1 There were no statutory referrals required under the Manningham Planning Scheme.

7. CONSULTATION / NOTIFICATION

- 7.1 The (initial) application was advertised to surrounding properties and a large sign was placed on the frontage of the site.
- 7.2 Twenty-one objections were received, one of which was from a group of residents in the area. The individual objections were received from the following property addresses:

15-43 (3 objections), 24-38	Harding Road Warrandyte
396-398, 400, 406, 416, 424, 426, 428-438, 431, 437-441, 440-444	Ringwood-Warrandyte Road Warrandyte
2-24, 32-34, 36-52,	Johansons Road Warrandyte
3-7	Royden Road Warrandyte
8	Hogan Avenue Warrandyte
198-202	Jumping Creek Road Warrandyte
24-38	Anzac Road Warrandyte

- 7.3 The grounds of objection mainly relate to the increase in noise levels arising from both the serving and consumption of alcohol on the deck, voices and the playing of amplified music on the deck. This would exacerbate the noise already coming from the venue and will affect the amenity of surrounding residential properties. In particular:
- Potential for live bands on the deck if amplification is allowed.
 - Potential noise from alcohol fuelled patrons on the deck.
 - The serving of liquor on the deck will increase the floor area able to be utilised for functions and dining options, which will encourage patrons to remain outdoors for any and all of the licensing hours.
 - This increase in noise will also be detrimental to wildlife, with the venue adjoining the Warrandyte State Park.
- 7.4 The objections also related to issues with the current operations including:
- Level of noise from music and activities already audible at excessive levels, patrons outside and leaving the venue, cleaners in the early hours.
 - Alleged breaches of the liquor license.
 - Breaches of the existing permit issued for the deck (PLN18/0415)
 - External lighting issues.

8. ASSESSMENT

- 8.1 This is an amended permit application, and therefore the assessment needs to consider and relate to the proposed changes only. Council may add additional conditions to the permit, but they need to relate to the proposed changes.
- 8.2 The main considerations for the appropriateness of this amended permit application (to authorise the sale/service and consumption of liquor on the

approved deck, and to delete/amend Condition 14 to allow amplified background music, announcements and wedding ceremonies on the deck subject to new conditions) in a formal sense are:

- The Planning Policy Framework, including Clause 13.05-1S Noise and Clause 21.07-06 Economic Development;
- The purpose and decision guidelines of Clause 52.27 Licensed Premises;
- The decision guidelines of Clause 65 – Approval of an Application; and,
- The issues raised in objections.

- 8.3 In reality, the consideration of both aspects (sale/service and consumption of liquor, and deleting/amending Condition 14) relates to noise, and the impact of this on the amenity of the area.

Planning Consideration

- 8.4 Clause 13.05-1S Noise Abatement has as its objective *“To assist the control of noise effects on sensitive land uses”* and this is intended to be achieved through ensuring *“that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area”*.

- 8.5 The noise emissions in this instance are from an existing deck, meaning the applicant is very limited in *‘using the range of building design, urban design and land use separation techniques’* to ameliorate noise impacts (noting, the deck is well separated from neighbouring dwellings by over 100m). What remains is the ability to control the land use function (i.e. the operation of the deck), and this must be considered in the context of what noise would prejudice (or unreasonably impact) community amenity.

- 8.6 The applicant has sought to balance this (in their consideration), through requesting six new conditions be added to the permit to limit detriment to the amenity of the area.

- 8.7 Before considering the appropriateness of the amendment, and whether an appropriate balance is achieved through the applicant’s proposal, it is noted:

Clause 21.07-06, Economic Development Issues - Green Wedge and Yarra River Corridor includes the objective *to ensure residential and environmental amenity is not affected by business activities, and to encourage sustainable business opportunities which complement the scenic, landscape and environmental qualities of the area.*

Similarly, the purpose of Clause 52.27, Licensed Premises is also *to ensure that the impact of the licensed premises on the amenity of the surrounding area is considered.* Decision guidelines provide for Council to address:

- *The impact of the hours of operation on the amenity of the surrounding area.*
- *The impact of the number of patrons on the amenity of the surrounding area.*

- 8.8 As a starting point, licensing the deck area and allowing limited amplified music outside is not an unreasonable request given the use of the venue that exists on site (a wedding and function venue), and the reasonable separation that exists between the venue’s homestead style building and its neighbours (over 100m).

What is critical, is that a reasonable balance is achieved in relation to operations on the deck where the outdoor activity is now focused.

- 8.9 Background noise in the broader area varies. While it may be quiet at times, particularly at night, there would be a reasonable level of ambient background noise from Ringwood-Warrandyte Road, property maintenance, and rural and residential activities during the daytime. Noise from the existing venue, and similar commercial operations nearby may also be heard.
- 8.10 Allowing limited amplified noise (music and voice) on the deck during the day and at background levels to facilitate a wedding ceremony, inclusive of music for a short time afterwards, is acceptable. This is largely consistent with the applicant's intentions and requested conditions, which can be implemented with only one significant change.
- 8.11 It is noted that background noise levels are defined in EPA Policy SEPP N-2, and the venue, including the deck, must accord with EPA Policy SEPP N-2 (Control of Music Noise from Public Premises) in any case. If noise from the deck complies with the background noise level in SEPP N-2, then the maximum noise limits allowed under the policy will easily be achieved also.
- 8.12 The one change to the applicant's requested conditions relating to noise is that they presently allow amplified music to be played for a maximum 7.5 hour continuous period (between 12noon and 7.30pm), all be it, at background level and associated with a 'wedding event'. If a wedding ceremony commenced at 12 noon, amplified music could then potentially be played all afternoon. The hearing of music for the deck for this length of time by objectors in the context of background noise in the area is undesirable and an added intrusion on their amenity. The applicant's condition will be further amended to limit amplified noise from speakers to a two-hour timeframe.
- 8.13 The concluding time of 7.30pm for amplified noise on the deck is appropriate, based on a maximum window of time, two hours and the other limitations proposed.
- 8.14 The type of speaker system used for music and voice is a less importance factor, however, officers understand that the use of a portable speaker owned by the venue offers the most practical solution, as the volume can be set by the venue once and then maintained at this level. The speaker can then be easily removed by the operator at the end of the two hour period so that the permit conditions can be easily met.
- 8.15 Likewise, allowing the sale/service and consumption of liquor on the deck during the day, inclusive of a two hour serving limit, immediately before and after a wedding ceremony as proposed by the applicant appears reasonable in the context of existing background noise, noting it is not the serving of liquor that generates noise, but the potential for rowdy behaviours from guests.
- 8.16 The two hour serving limit and end of service at 7.30pm should ensure no unreasonable amenity loss will occur to objectors from patrons who have been served alcohol for a long period of time, and when background noise is likely to subside.
- 8.17 The likelihood of rowdy behaviour increases as serving time increases. The applicant has requested a 10pm close of the deck, and the possibility for

consumption of alcohol on the deck until this time. Officers are concerned by this, given background noise in the area should have subsided by this time and be very limited. Unreasonable patron noise is likely to impact neighbours during the evening, particularly given the number of events occurring at the venue.

- 8.18 To encourage and allow the use of the deck for the consumption of alcohol between the hours of 7.30pm and 10pm is unreasonable, and only encourages guests to congregate outside for longer periods of time after many hours of alcohol service inside the venue.
- 8.19 A condition will limit the outdoor consumption of liquor on the deck after 8pm, (being 30min after the final service of liquor on the deck) thereby allowing patrons reasonable time to finish their drinks. The serving of pre-dinner drinks and canapés on the deck would conclude by this time, with the more formal part of the proceedings then continuing inside the venue.
- 8.20 A condition will also require a Management Plan to be submitted to and approved by Council, prior to the use of the deck commencing for the sale and consumption of liquor, to address the conditions of use of the deck required under this permit.

Objector Concerns

- 8.21 New conditions, that are slightly firmer than requested by the applicant, generally address the concerns of neighbours in relation to the sale/service and consumption of liquor on the deck, and the playing of amplified speaker noise as per the above paragraphs.
- 8.22 Council has limited opportunities to consider other aspects raised by objectors, particularly in relation to the management of the existing venue within the homestead style building.
- 8.23 It is recommended Council include a condition to limit opening of windows and doors to the deck area after 8pm which may allow music within the venue to escape. A condition requiring windows to be closed, and doors to have a self-closing mechanisms is possible and easily regulated.
- 8.24 It is positive that the owner/operator seeks to manage amenity through an existing security arrangement, particularly at the end of the night when guests are leaving the venue (through the front door and not via the deck). The engagement of a security service is beyond the requirements of the liquor licence, although the license does include a requirement that:
- The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under the licence.*
- 8.25 The security service, together with proposed signs, can clearly regulate and limit the use of the deck in accordance with the proposed conditions.
- 8.26 The existing venue also has management limitations and requirements through the liquor license issued by VCGLR and SEPP N-2 (Control of music noise from public premises).

8.27 The impact from permitting the sale/service and consumption of liquor for limited periods from the deck and amplified speaker noise at background level on the nearby State Park appears negligible.

9. DECLARATION OF CONFLICT OF INTEREST

9.1 No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.